

**Procurement Procedures and Policies**

**for**

**Post-Award Management of Federal Financial Assistance Awards**

**by**

**Office of Sponsored Projects**

This document describes the procedures and policies that all Principle Investigators or Project Directors must follow when procuring property and services funded Federal financial assistance awards to the College that are administered as part of the Post-Award Management supported by the Office of Sponsored Projects.

**Procedures**

The Office of Sponsored Projects maintains information on its website for [Post-Award Management](http://pharmacy.presby.edu/or/office-of-sponsored-projects/osp-post-award-management/) in addition to sections for [College – Forms and Documents](http://pharmacy.presby.edu/departments-offices/office-of-sponsored-projects/resources/forms-and-documents/) and [College – Policies and Procedures](http://pharmacy.presby.edu/departments-offices/office-of-sponsored-projects/resources/policies-and-procedures/).

As the Principle Investigator or Project Director for any Federally funded financial assistance resulting in an award, sub-award or sub-contract where the College receives these funds for a funded project the Principle Investigator or Project Director is responsible to follow all the policies stated above for the procurement of property, goods and/or services.

* **Duties of the Principal Investigator/Project Director** **–** In accepting a grant or contract the College assumes an obligation to administer the award in compliance with all applicable institutional, agency, federal, state or other regulations governing the use of the funds awarded. Likewise, the Principal Investigator/Project Director agrees to abide by the terms and conditions of the award and manage the funds within the approved budget.
* The Principal Investigator/Project Director will initiate all requests for funds drawn from the account for the direct costs associated with the award using College approved forms and procedures, approve budgetary and programmatic changes, prepares technical reports and ensures that individuals under the grant are also familiar with all related compliance issues.
* There is a certain degree of latitude in transferring funds between line items within the budget of no more than 10%. If transfers exceed 10% a revised budget submission will likely be required and submitted for approval by the Program Officer associated with the agency and the award. If this is necessary please contact the Office of Sponsored Projects as early as possible.
* Many agencies will allow a one-time, No Cost Time Extension of up to 12 months if the Principal Investigator/Project Director is unable to complete the original scope of the project within the designated timeframe that was outlined in the proposal. This will require a formal written request that will need to include a detailed justification for the requested extension and a plan for completing the work and estimate of unexpended funds. This request should be made well in advance of the expiration date of the award and will need to be signed by the Principal Investigator/Project Director and the Director of the Office of Sponsored Projects.

**Competition and Order Placement Policies**

The following guidelines must be followed by Principal Investigators or Project Directors for the purchase of goods and services.

**Purchases equal to or less than $3,000**

Goods and services where the total is less than or equal to $3,000 **(or $2,000.00 in the case of acquisitions for construction subject to the Davis-Bacon Act)** may be purchased directly with minimum competition. Pricing, service and product/service quality are equal factors in vendor selection. Orders should be transacted by using a company’s invoicing process. This process provides better record management than using the College’s purchasing card. Orders transacted by using the College’s purchasing card may be done only by qualified employees and the individual transaction limit is no more than $3,000 to qualify as a micro-purchase as defined by the College’s Procurement Policy outlined below.

**Purchases from $3,001 to $150,000**

Simplified Acquisition Threshold means the dollar amount below which the College may purchase property or services using Small Purchase methods. The College adopts Small Purchase procedures in order to expedite the purchase of items costing less than the Simplified Acquisition Threshold. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. *As of the publication of this Part, the Simplified Acquisition Threshold is $150,000, but this threshold is periodically adjusted for inflation.*

The College uses Small Purchase procedures for the procurement of goods and services costing from $3,001 to $150,000 and should be selected on the basis of informal competitive price quotations from a minimum of two qualified sources and adequately documented with other backup for the procurement. Pricing, service and product/service quality are equal factors in vendor selection.

**All Federally funded awards now require the use of the College’s** [**Federal Award/Pass-Through Entity Procurement Form**](http://pharmacy.presby.edu/wp-content/uploads/2015/07/Federal-Award-or-Pass-Through-Entity-Procurement-Documentation-Form-07-2015.pdf) **for any procurement transaction. This form is attached to the College’s Expenditure Approval Request Form and submitted to the Office of Sponsored Projects for sign-off approval before submission to the Business Office for processing any payment.**

**Exceptions to Competition Policies**

**Sole Source Purchases**

Purchases from a single vendor may be made when only one firm can satisfy the product/service requirements. Price is not the determining factor in Sole Source vendor selection.

**Emergency Purchases**

Emergency purchases are those required to protect life and/or property or to prevent substantial economic loss or the interruption of service. Formal procedures will be waived but competition should be used where possible.

The Principle Investigator or Project Director is required to submit all documentation, includinga [**Federal Award/Pass-Through Entity Procurement Documentation Form**](http://pharmacy.presby.edu/wp-content/uploads/2015/07/Federal-Award-or-Pass-Through-Entity-Procurement-Documentation-Form-07-2015.pdf) for the procurement of any property, goods and/or services, prior to submission to vendors, contractors or any other service providers. All procurement requests must be submitted on [College – Forms and Documents](http://pharmacy.presby.edu/departments-offices/office-of-sponsored-projects/resources/forms-and-documents/) to the Grants Financial Administrator – Heather Owens for approval and forwarding to the College Business Office for processing. *This also includes any purchasing card transactions. It should also be noted that procurements by purchasing cards from Federally funded awards must not exceed $3,000.00 (or $2,000.00 in the case of acquisitions for construction subject to the Davis-Bacon Act) and must also comply with the submission of all documentation to the Grants Financial Administrator for approval prior to processing any transactions.*

**Federal Award/Pass-Through Procurement Decision Tree**

If Reasonable Cost, Distribute Purchases

$1-$3,000

Micro Purchase

Complete Fed. Awd./Pass-Through Documentation Form

Determine Approximate Cost

Obtain 2 or More Written Quotes

$3,001-$150,000

Small Purchase

$150,001+ Standard Purchase

Sealed Bidding

Non-competitive Procurement

Competitive Procurement

Other

Cost-reimbursement

Firm Fixed Price

Solicit Proposals/Quotes

Complete Expenditure Approval Form

Complete Fed. Awd./Pass-Through Documentation Form

Perform Cost Analysis



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**Policies**

**General Procurement**

The College will also consider as part of these Procurement Policies and Procedures all applicable State and Local laws and regulations, provided that the procurements conform with applicable Federal law.

The College must maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts and purchase orders.

The College will adhere to written standards of conduct covering Employee and Organizational Conflict of Interest and Policy for Nominal Gratuities. These policies are and will be maintained on the Office of Sponsored Projects website for reference under the “Policies and Procedures – College” section.

A primary goal is to avoid acquisition of unnecessary or duplicative items. Whenever possible the College will consider consolidating or breaking out procurements to obtain a more economical purchase. When appropriate an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach to the procurement of property and/or services. Also wherever feasible the use of shared services will be evaluated for the use of common or shared goods and services. Additionally the College will consider whenever feasible, the acquisition of surplus property and equipment to reduce project costs.

**Construction Projects**

With regard to contracts for construction projects the College will consider using **Value Engineering Clauses** in contracts for projects of sufficient size to offer reasonable opportunities for cost reductions. Value Engineering is defined as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.

The College will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Considerations will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources available to successfully complete the project. Sub-awards and contracts funded with Federal funds shall not be issued to those contractors who are debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. A listing of those entities that are not allowed to do business with the Federal government can be found at <https://www.sam.gov/>. Click on “Search Records” and click on “ADVANCED SEARCH-EXCLUSION” for ensure that the chosen contractor can receive Federal flow-through funds.

The College will maintain records sufficient to detail the history of the procurement and will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price.

The College may use Time and Material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-Material contracts mean a contract whose cost to the College is the sum of:

1. The actual cost of materials.
2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit.

Since this formula generates an open-ended contract price, a time-and materials provides no profit incentive to the contractor for cost control or labor efficiency. Therefore each contract must set a ceiling price that the contactor exceeds at its own risk. The College will assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

The College will be responsible, in accordance with good administrative practices and sound business judgment for the settlement of all contractual and administrative issues arising out of procuring the contract. Such issues will include but are not limited to source evaluation, protests, disputes and claims. This does not relieve the College of any contractual responsibilities under its contracts.

**Competition**

The College will conduct all procurement in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurement contracts. The College will not create situations to be considered restrictive of competition with such practices as:

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies.
4. Noncompetitive contracts to consultants that are on retainer contracts.
5. Organizational Conflicts of Interest.
6. Specifying only a “Brand Name” product instead of allowing “An Equal” product to be offered and describing the performance or other relevant requirements of the procurement.
7. Any arbitrary action in the procurement process.

The College will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state and local geographical preferences in the evaluation of bids and proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographical preference. When contracting for architectural and engineering (A/E) services, geographical location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The College will maintain written procedures for procurement transactions which ensure that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured that do not contain features which unduly restricted competition. The statement may include a statement of the qualitative nature of the material, product or service to be procured and when necessary must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “Brand Name or Equivalent” description may be used as a means to define the performance or other salient requirements of the procurement. The specific features of the named brand which must be met by offers must be clearly stated.
2. Identify all requirements which those submitting offers must fulfill and all other factors to be used in evaluating bids or proposals.

The College will ensure that all prequalified lists of persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The College will not preclude potential bidders from qualifying during the solicitation period.

**Methods of Procurement**

1. **Micro-Purchases** –the acquisition of supplies or services, the aggregate dollar amount of which does not exceed **$3,000.00 (or $2,000.00 in the case of acquisitions for construction subject to the Davis-Bacon Act)**. To the extent practicable the College must distribute micro-purchases equitably among qualified suppliers. *Micro-purchases may be awarded without soliciting competitive quotations if the College considers the price to be reasonable. These purchases should be submitted using the* [***Federal Award/Pass-Through Entity Procurement Form***](http://pharmacy.presby.edu/wp-content/uploads/2015/07/Federal-Award-or-Pass-Through-Entity-Procurement-Documentation-Form-07-2015.pdf)*.*
2. **Small Purchases** – are between $3001.00 and less than $150,000.00 for the acquisition of supplies or services, those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the **Simplified Acquisition Threshold currently set at $150,000.00.**

Simplified Acquisition Threshold means the dollar amount below which the College may purchase property or services using Small Purchase methods. The College adopts Small Purchase procedures in order to expedite the purchase of items costing less than the Simplified Acquisition Threshold. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. *As of the publication of this Part, the Simplified Acquisition Threshold is $150,000, but this threshold is periodically adjusted for inflation.*

If the College uses Small Purchase procedures, price or rate quotations must be obtained from an adequate number of qualified sources and should use the [**Federal Award/Pass-Through Entity Procurement Form**](http://pharmacy.presby.edu/wp-content/uploads/2015/07/Federal-Award-or-Pass-Through-Entity-Procurement-Documentation-Form-07-2015.pdf).

**Standard Purchases $150,000 or greater**

**Require use of the** [**Federal Award/Pass-Through Entity Procurement Form**](http://pharmacy.presby.edu/wp-content/uploads/2015/07/Federal-Award-or-Pass-Through-Entity-Procurement-Documentation-Form-07-2015.pdf)

1. **Sealed Bids** – publicly solicited (formal advertising) and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions below apply:
	1. In order for sealed bidding to be feasible the following conditions should be present:
		1. A complete, adequate and realistic specification or purchase description is available.
		2. Two or more responsible bidders are willing and able to compete effectively for the business.
		3. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
	2. If sealed bids are used the following requirements apply:
		1. The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.
		2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
		3. All bids will be publicly opened at the time and place prescribed in the invitation for bid.
		4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
		5. Any and all bids may be rejected if there is sound documented reason.
2. **Competitive Proposals** – normally conducted with more than one source submitting an off, and either a fixed price or cost-reimbursement type of contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used the follow requirements apply:
	1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent possible.
	2. Proposals must be solicited from an adequate number of qualified sources.
	3. The College must have a written method of conducting technical evaluations of the proposals received and for selecting recipients.
	4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
	5. The College may use competitive proposal procedures for qualification-based procurement of architectural/engineering (A/E) professional services whereby competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
3. **Non-competitive Proposals** – is procurement through solicitation of a proposal from only one source and may be used only when one or more of the follow circumstances apply:
	1. The item is available only from a single source.
	2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
	3. The Federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from the College.
	4. After solicitation of a number of sources competition is determined inadequate.

**Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms**

The College must take all necessary affirmative steps to assure minority businesses, women’s business enterprises and labor surplus area firms are used when possible.

1. Affirmative steps must include:
	1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists.
	2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources.
	3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises.
	4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises.
	5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
	6. Requiring the prime contractor, if sub-contracts are to be let, to take the affirmative steps a. through e listed above.
	7. Qualified lists of small and minority businesses and women’s business enterprises can be found at:
		* State of South Carolina’s Office of Small and Minority Business Assistance: <http://osmba.sc.gov/directory.html>
		* Federal Government’s System for Award Management Advanced Entity Search: <https://www.sam.gov/>

1. Click on the “Search Records” button

2. Click on the “ADVANCED SEARCH – ENTITY” button

3. Check the box for “Socio-Economic Status” and choose the boxes as needed. Women Owned Small Business, Self-Certified Small Disadvantaged Business, and SBA Certified 8A Program Participant are good starting points.

**Contract Cost and Price**

The College must perform a cost or price analysis in connection with every procurement action in excess of the **Simplified Acquisition Threshold** including contract modifications. *As of the publication of this Part, the Simplified Acquisition Threshold is $150,000, but this threshold is periodically adjusted for inflation.* The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the college must make independent estimates before receiving bids or proposals.

The College must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of sub-contracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

The College may reference its own cost principles that comply with the Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**Federal Awarding Agency or Pass-Through Entity Review**

The College must make available upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However if the College desires to have the review accomplished after a solicitation has been developed the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

The College must make available upon request for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates when:

1. The College’s procurement procedures or operation fails to comply with the procurement standards.
2. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
3. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “Brand Name” product.
4. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to another bidder other than the apparent low bidder under a sealed bid procurement.
5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

The College is exempt from the pre-procurement review in section above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards above.

1. The College may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third party contracts are awarded on a regular basis.
2. The College may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency’s right to survey the system. Under a self-certification procedure the Federal awarding agency may rely on written assurances from the College that it is complying with these standards. The College must cite specific policies, procedures, regulations or standards as being in compliance with these requirements and have its system available for review.

**Bonding Requirements**

For construction or facility improvement contracts or sub-contracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the College provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made the minimum requirements must be as follows:

1. A bid guarantee from each bidder equivalent to 5% of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required with the time specified.
2. A performance bond on the part of the contractor for 100% of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
3. A payment bond on the part of the contractor for 100% of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**Contract Provisions**

The College’s contracts must contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards found in the Federal Register applicable to this Uniform Guidance. *See Appendix II to Part 200 below for reference.*

**Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

**(A)** Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency

Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal

remedies in instances where contractors violate or breach contract terms, and provide

for such sanctions and penalties as appropriate.

**(B)** All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

**(C)** Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of ‘‘federally assisted construction contract’’ in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60– 1.4(b), in accordance with Executive Order 11246, ‘‘Equal Employment Opportunity’’ (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, ‘‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,’’ and implementing regulations at 41 CFR part 60, ‘‘Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.’’

**(D)** Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, ‘‘Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction’’). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland ‘‘Anti-Kickback’’ Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, ‘‘Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States’’). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**(E)** Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is

permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(F)** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of ‘‘funding agreement’’ under 37 CFR § 401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ‘‘funding agreement,’’ the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, ‘‘Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,’’ and any implementing regulations issued by the awarding agency.

**(G)** Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and sub-grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**(H)** Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

**(I)** Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), ‘‘Debarment and Suspension.’’ The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**(J)** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

**(K)** See § 200.322 Procurement of recovered materials.